



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

January 31, 2003

Dr. June Harrigan, Manager
Environmental Planning Office
Hawaii Department of Health
919 Ala Moana Boulevard
Honolulu, Hawaii 96814

Dear Dr. Harrigan:

The Environmental Protection Agency (EPA) appreciates the work you and your staff have directed toward developing revisions to Hawaii's water quality standards in Title 11, Chapter 54 of the Hawaii Administrative Rules. The time and effort you have expended discussing the standards with the technical advisory committee, and presenting draft revisions to the public, ensure that all concerns are heard and considered. We understood the need to temporarily delay progress on these revisions to the standards while the recent election was held and the new administration entered office. We now understand that the Hawaii Department of Health (HDOH) is prepared to move ahead with their commitment to adopt amendments to Hawaii's water quality standards. HDOH should do so in light of the national deadline associated with at least one of the amendments.

The purpose of this letter is to indicate the amendments EPA believes HDOH should address in the next few months and the reasons we are suggesting these revisions. These issues, because of their timeliness, are more limited in number than the range of topics discussed within your technical advisory committee during the past two years. Revisions the EPA is suggesting at this time include amendments to the recreational water criteria, definition of state waters, and statewide antidegradation policy. Additionally, corrections of typographical errors inadvertently made in previous revisions are needed. We recognize that draft revisions, while not yet formally submitted to the EPA, have addressed all of the issues discussed below. Additionally, EPA has reviewed the draft amendments, discussed the issues with you, and will be able to approve the amendments if they are submitted in their current form.

Recreational Waters Criteria

The EPA's *Ambient Water Quality Criteria for Bacteria - 1986* was developed for the protection of recreational waters. These criteria include enterococci for marine waters and either enterococci or *E. coli* for fresh waters. The Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 requires states to adopt EPA's 1986 criteria for bacteria by April 2004. If a state does not adopt such criteria, EPA will have to do so in order to meet the statutory deadline. HDOH has already adopted enterococci for marine waters. HDOH should adopt enterococci as the bacterial indicator for fresh water to be consistent with the marine criteria. HDOH may, however, adopt *E. coli* instead of enterococci for fresh water. *The Implementation Guidance for Ambient Water Quality Criteria for Bacteria*, currently in draft form, is expected to be finalized within the next two months. This document provides guidance on implementing geometric mean and single sample

maximum limits for these indicators.

State Waters Definition

EPA conducted a review of HDOH's National Pollutant Discharge Elimination System (NPDES) program in February 2000. The program review indicated that the definition of "state waters" in the State's statute HRS §342D-1, which pertains to the NPDES program, differs from the definition contained in HAR §11-54-01, which pertains to water quality standards. The former is consistent with the EPA definition of "waters of the United States" at 40 CFR §122.2. The definition in HAR §11-54-01, however excludes the application of water quality standards to non-tributary "ditches, flumes, ponds, and reservoirs" that are either "required for pollution control" or "used solely for irrigation." The State should clarify the coverage of the language concerning water pollution control" to ensure that it does not go beyond the federal waste treatment system exemption. The State should also clarify the coverage of the language concerning irrigation to ensure that it does not exclude waters that otherwise fall within the definition of "waters of the United States."

Antidegradation

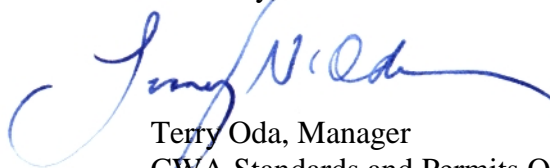
At present, the tier one and tier two components of Hawaii's antidegradation policy are found in sections 11-55-02 and 11-54-01.1 of Hawaii's Administrative Rules. Other provisions of Chapter 54 can be interpreted as similar to components of the federal antidegradation policy. The consistency of the State's antidegradation policy with all of the requirements of 40 CFR 131.12 should be made more explicit in Chapter 54.

Correction of typographical errors

The Amendment and Compilation of the Hawaii Administrative Rules, Chapter 11-54, Water Quality Standards, dated April 4, 2000, contain inadvertent typographical errors. HDOH temporarily corrected and clarified the errors by listing them in the Department of Health Notice on November 8, 2000, with the intent of following the Notice with corrective rule making. These errors should be corrected in conjunction with this current amendment process.

EPA will continue to work with the State to develop a long-term strategy for future revisions to Hawaii's water quality standards. If there are any questions regarding this letter, please contact Sara Roser, of my staff, at 415-972-3513. EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,



Terry Oda, Manager
CWA Standards and Permits Office
Water Division

CC: Dr. Chiome Fukino